

IN THE CHANCERY COURT OF SUMNER COUNTY, TENNESSEE
FOR THE EIGHTEENTH JUDICIAL DISTRICT AT GALLATIN

STATE OF TENNESSEE,)	
)	
Plaintiff,)	
)	
v.)	No. 2001C-4
)	Chancellor Gray
KATHY DAVIS, CONNIE GASKIN,)	
and ROBERT GASKIN, SR., all individually)	
and doing business as AMERICA’S BEST)	
COMPUTERS and AMERICA’S BEST)	
COMPUTER DISTRIBUTER, both)	
unincorporated businesses, now doing business)	
as THE COMPUTER PARTS ZONE, an)	
unincorporated business,)	
)	
Defendants.)	
)	

ORDER GRANTING SUMMARY JUDGMENT
IN FAVOR OF PLAINTIFF

This matter came before the Court on August 9, 2002, upon the Plaintiff’s Motion for Summary Judgment. The State was represented by counsel, and the Defendants did not participate either in person or by representative. After hearing the evidence presented and a review of the record, the Court is of the opinion that the Plaintiff’s Motion should be granted. Therefore,

IT IS ORDERED pursuant to Tennessee Rules of Civil Procedure 12.03 and 56.01 that judgment is granted against Defendants as follows:

INJUNCTION

1. Pursuant to Tenn. Code Ann. §47-18-108(a)(1) and (4), the Defendants, their employees, agents, successors and assigns, and other persons in active concert or participation with the Defendants, are permanently enjoined from engaging, directly or indirectly, in the following conduct:

- (A) Defendants shall be prohibited from directly or indirectly engaging in any unfair, misleading or deceptive acts or practices in the conduct of his business. Defendants shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to § 47-18-104(b)(27) which prohibits any and all unfair and/or deceptive acts or practices;
- (B) Defendants shall be prohibited from directly or indirectly, owning, operating,

managing, advising, or being employed or involved in any way in computer sales, repair or maintenance in the State of Tennessee without fully complying with the laws of Tennessee;

(C) Defendants shall be prohibited from directly or indirectly, offering or providing computer sales, repairs or maintenance in the State of Tennessee without fully complying with the laws of Tennessee;

(D) Defendants shall be prohibited from directly or indirectly, representing or implying that they will deliver goods or services to any person if such is not the case;

(E) Defendants shall be prohibited from directly or indirectly, making any representations to consumers that a transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law.; and

(F) Defendants shall be prohibited from directly or indirectly, demanding payment from any individuals for services or goods provided in connection with Kathy Davis, Connie Gaskin, Robert Gaskin, Sr., America’s Best Computers, and America’s Best Computer Distributor, or the Computer Parts Zone, in addition to the amount paid pursuant for the service agreements provided at the time of sale.

RESTITUTION

2. Pursuant to Tenn. Code Ann. § 47-18-108(b)(1), judgment is entered against the Defendants, jointly and severally, for restitution to each of the following consumers in the amount indicated:

NAME	ADDRESS/TELEPHONE NUMBER	AMOUNT OF RESTITUTION
Howard E. Berg	9931 Kumquat Street NW Coon Rapids, MN 55433	\$1,029.00
Ken Cory	Box 32 Arlington, NE 68002 (402) 478-5298	\$689.00
Ronald Davis	208 St. John Drive Belleville, IL 62221 (618) 236-2682	\$0.00 (\$359.97 credit received from Visa card company)
Russell W. Doughty	6575 Rivercrest Road Bonne Terre, MO 63628 (573) 431-3222	\$232.20
Dora Ehlert	312 Cooper Box 19 Chaplin, IL 62628 (217) 472-6511 (217) 472-6511	\$689.08
Kevin Gregg	5235 Black Friars Lane Minnetonka, MN 55345 (612) 474-8536 (612) 661-1956 new address: 7116 Marstella Drive Brownsburg, IN 45112-8441	\$398.83
Dennis and Danna Hiner	1405 6 th Avenue S.E. Altoona, IA 50009 (515) 294-3041	\$1,050.00

Lewis and Xalin Horne	3140 Prince Circle Broomfield, CO 80020 (303) 404-3242	\$0.00
Samuel Major	1413 Mt. Vista Drive Knoxville, TN (423)588-2883 (423) 609-7975	\$ 487.48 (\$92.48 on site warranty, \$145.00 work on computer, \$100.00 for computer assembly, \$150.00 for CD player)
Benjamin Means	Rt. 1, Box 69C Quincy, IL 62301 (217) 885-3546 (217) 277-2248	\$177.81
Fiona Moody	6635 Brookridge Drive Omaha, NE 68137 (402) 895-4064 (402) 233-7155	\$267.00
Ronald Setser	25256 Castlewood Drive Woodhaven, MI 48183 (734) 675-6332 (248) 456-6531	\$0.00 (\$450.00 was obtained via credit card charge back.) Respondents agree not to seek further collection of that amount from the credit card company.
Shirley Shook	572 W. 19111 Lochrest Blvd. Muskego, WI 53150 (414) 679-3079	\$0.00
Patricia A. Smith	236 County Road 705 Athens, TN 37303 (423) 746-0970 (423) 746-9077	\$1,300.00
Martin Spitzer	3474 N. Christine Drive Decator, IL 62525 (217) 877-2674	\$0.00 (\$313.57 was obtained via credit card charge back.) Respondents agree not to seek further collection of that amount from the credit card company.
Lynn Stuhr	W3719 Highview Drive Appleton, WI 54913 (920) 830-1005 (920) 734-5721 ext. 2843	\$800.00
Charles L. Weed	7792 Four Leaf Drive Greenville, IN 47124 (812) 923-7092 (502) 452-7755	\$417.30
Tim Wylder	201 S. Elm Clinton, IL 61727 (217) 935-9538 (309) 888-7638	\$40.00

2.1 The total of Seven Thousand, Five Hundred, Seventy-Seven and 70/100 Dollars (\$7,577.70) shall be paid to the State of Tennessee and delivered to the Director of the Division of Consumer Affairs or his representative for distribution to these consumers. In the event the State is unable to locate any of the above listed consumers, the funds otherwise due such consumers shall be treated as

unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. §66-29-101 *et seq.*, and may be delivered to the State Treasurer prior to the statutory due date of one year set forth in Tenn. Code Ann. §66-29-110, covering unclaimed property held by courts, public officers and agencies.

CIVIL PENALTIES

3. Pursuant to Tenn. Code Ann. §47-18-108(b)(3), judgment is entered against the Defendants, jointly and severally, for civil penalties of One Thousand and 00/100 Dollars (\$1,000.00) per violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.* The Court finds no less than 18 separate violations of the Consumer Protection Act and therefore assesses against Defendants a total civil penalty of Eighteen Thousand and 00/100 Dollars (\$18,000), representing a violation in each of the 18 consumer transactions for which consumers are entitled to restitution.

ATTORNEYS' FEES AND COSTS

4.1. Pursuant to Tenn. Code Ann. §47-18-108(a)(5) and (b)(4), judgment is further entered against the Defendant for attorneys' fees incurred in the investigation and prosecution of this action in the amount of Seven Thousand, Four Hundred, Six and 25/100 Dollars (\$ 7,406.25) which may be used for consumer protection purposes at the sole discretion of the Attorney General and Reporter.

4.2. Pursuant to Tenn. Code Ann. §47-18-108(a)(5) and (b)(4), judgment is granted against the Defendants for the reasonable costs and expenses incurred in the investigation and prosecution in the amount of Eight Hundred, Eighty-Five and 67/100 Dollars (\$ 885.67) which may be used for consumer protection purposes at the sole discretion of the Attorney General and Reporter.

COLLECTION OF MONETARY JUDGMENT

5. This is a Judgment for which execution may issue. The State or its authorized representatives may seek execution, garnishment or other legal process, together with statutory interest pursuant to Tenn. Code Ann. § 47-14-121 when collecting any monetary amounts awarded herein.

Additionally, the State may seek attorneys' fees or any other costs associated with any such collection efforts against the Defendants.

COURT COSTS

6. Pursuant to Tenn. Code Ann. § 47-18-116, all costs associated with this action are taxed to the Defendants. No costs are to be taxed to the State.

IT IS SO ORDERED, ADJUDGED AND DECREED.

ENTERED THIS ____ DAY OF AUGUST, 2002.

THOMAS E. GRAY
CHANCELLOR

SUBMITTED FOR ENTRY:

STATE OF TENNESSEE

BY: _____
LUCIAN D. GEISE
Assistant Attorney General
B.P.R. No. 19392
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202
(615) 741-3108

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order Granting Plaintiff's Motion for Summary Judgment has been forwarded by first class U.S. Mail to Defendants Kathy Davis, Connie Gaskin, Robert Gaskin, Jr., and Robert Gaskin, Sr., doing business as The Computer Parts Zone, 795 West Main Street, Hendersonville, TN 37075.

This the _____ day of August, 2002.

LUCIAN D. GEISE
Assistant Attorney General

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